

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

|                                  |   |                                      |
|----------------------------------|---|--------------------------------------|
| <b>KIM L. MCMULLEN,</b>          | : | <b>CIVIL ACTION NO. 1:14-CV-1517</b> |
|                                  | : |                                      |
| <b>Petitioner</b>                | : | <b>(Chief Judge Conner)</b>          |
|                                  | : |                                      |
| <b>v.</b>                        | : |                                      |
|                                  | : |                                      |
| <b>PENNSYLVANIA, PA ATTORNEY</b> | : |                                      |
| <b>GENERAL,</b>                  | : |                                      |
|                                  | : |                                      |
| <b>Respondents</b>               | : |                                      |

**ORDER**

AND NOW, this 11th day of August 2014, upon consideration of the petition for writ of habeas corpus (Doc. 1) filed by petitioner Kim L. McMullen on August 4, 2014, challenging his February 19, 1999 Court of Common Pleas of Huntingdon County second degree murder conviction, Commonwealth v. McMullen, 745 A.2d 683 (Pa. Super. 2000), and it appearing that the court has previously determined the legality of such conviction, McMullen v. Tennis, No. 1:06-CV-0183, 2006 WL 3437314 (M.D.Pa. Nov. 29, 2006), and that petitioner fully exhausted the appeal of this determination by pursuing the matter in the United States Court of Appeals for the Third Circuit, McMullen v. Tennis, 562 F.3d 231 (3d Cir. 2009), and in the United States Supreme Court, which denied his petition for writ of certiorari, McMullen v. Tennis, 558 U.S. 833 (2009), and it further appearing that this filing constitutes a second or successive petition for writ of habeas corpus subject to the Antiterrorism and Effective Death Penalty Act ("AEDPA"), Pub.L. No. 104-132, 110 Stat. 1214 (Apr. 24, 1996), which specifically provides that "[b]efore a second or successive

application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application,” 28 U.S.C. § 2244(b)(3)(A), see Scott v. Klem, No. 4:CV-05-1337, 2005 WL 1653165, \*2 (M.D.Pa. July 12, 2005) (citing 18 U.S.C. § 2244(b)); Wilson v. York Cnty. Common Pleas Ct., 2005 WL 1229719, at \*3 (M.D.Pa. May 24, 2005) (citing Robinson v. Johnson, 313 F.3d 128, 139 (3d Cir. 2002)) (recognizing that “[t]he Third Circuit clearly held that, absent an order from the circuit court granting leave to a petitioner, a district court does not have subject matter jurisdiction to entertain any petition for writ of habeas corpus that it deems to be a second or successive petition”), and it being evident that petitioner has failed to comply with Section 2244(b)(3)(A), it is hereby ORDERED that the petition is DISMISSED without prejudice to petitioner to seek approval from the court of appeals pursuant to 28 U.S.C. § 2244(b)(3)(A) to file a second or successive habeas petition.

/S/ CHRISTOPHER C. CONNER

Christopher C. Conner, Chief Judge  
United States District Court  
Middle District of Pennsylvania